IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4349 OF 1996

C. Gopinathan Pillai)
Flat No,.206, Sweety Apartments)
Murugan Nagar, Nigadi)
Pune 411 044.).. Petitioner

Versus

1) M/s.Thermax Limited)
D-13, MIDC Industrial Area)
Chinchwad, Pune 411 019.)

2) Mrs.Anu Rohinton Aga)
Director (Human Resources))
(Presently Chairperson))
Thermax Limited, D-13, MIDC)
Industrial Area, Chinchwad)
Pune 411 019.)

3) Shri Kiran P.Gandhi)
Divisional Managar (OD & Trg.))
Thermax Limited, D-13, MIDC)
Industrial Area, Chinchwad)
Pune 411 019.)

4) Shri V.A.Garge, Member)
Industrial Court, Pune.)

5) Shri B.M.Khodade, Judge)
Labour Court-I, Pune.).. Respondents

Dr.R.S.Kulkarni with Mr.Abhay Kulkarni for the Petitioner.

Mr.S.K.Talsania i/b.M/s.Sanjay Udeshi & Co. for

Respondent Nos.1 to 3.

Respondent Nod.4 and 5 formal parties.

CORAM: SMT.NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 30TH JULY 2004

JUDGMENT DELIVERED ON : 2ND SEPTEMBER 2004

JUDGMENT :

. This Petition challenges the order dated 12th July 1996 of the Industrial Court, Pune passed in Revision Application No.16 of 1996 setting aside the order dated 18th January 1996 passed by the 1st, Labour Court, Pune in Complaint (ULP) No.240 of 1994 whereby the Labour Court had held that the Petitioner is a workman.

2. The Petitioner was appointed initially with M/s.Thermax Limited, Respondent No.1 herein, (hereinafter referred to as "the Company") as a Stenographer in Grade IV on 1st July 1981. The Rules and Regulations applicable to the staff members were applicable to him. Thereafter there was a restructuring of the grades and the employees were graded into Grades "M", "P" and "S" - "M" being the Managerial grade, "P" the Professional grade and "S" denoting the Staff grade. The Petitioner was promoted to Grade S-2 and was designated as Officer (Training) from 1st July 1993. The services of the Petitioner were terminated on 24th August 1994. Aggrieved by this decision of the Company, the Petitioner filed a Complaint under Items 1(a), (b), (c), (d) and (f) and Item 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention

of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "MRTU & PULP Act"). The Company contested the Complaint and contended that the Petitioner was not a workman under Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act") and therefore not an employee under the MRTU & PULP Act. It was contended that the Complaint was not maintainable as the Labour Court had no jurisdiction to decide a Complaint which was filed by a person who was not an employee.

3. Evidence was adduced before the Labour Court. Voluminous documentary evidence was produced. The Petitioner examined himself. The Company examined Kiran Gandhi, Respondent No.3 in support of their contention. The Labour Court after considering the evidence on record, came to the conclusion that the Petitioner was a "workman" as defined under Section 2(s) of the ID Act and, therefore, was covered by the definition of "employee" under Section 3(5) of the MRTU & PULP Act. The order of the Labour Court was challenged by the Company by preferring a Revision Application under Section 44 of the MRTU & PULP Act. The Industrial Court allowed the Revision Application on 12th July 1996 and dismissed the Complaint. The Industrial Court was of the view that the findings of the Labour Court that the Petitioner was a workman was perverse and that the

voluminous documentary evidence on record demonstrated that the Complaint was not maintainable as the Petitioner was not a workman. The Industrial Court was of the view that the Petitioner was working as a co-ordinator, assessor and organiser and this work could not be considered as clerical work as held by the Labour Court. It is this order of the Industrial Court which is impugned in the present Writ Petition.

4. Dr.Kulkarni for the Petitioner submits that the Industrial Court ought not to have interfered with the findings of the Labour Court by re-appreciating the evidence on record. He submits that under Section 44 of the MRTU & PULP Act the Industrial Court has a very limited jurisdiction and can only ascertain whether the conclusions reached by the Labour Court are perverse. In the event the Industrial Court finds that the conclusions are perverse, the Industrial Court can set aside the order of the Labour Court. However, while doing so, according to the learned Advocate, the Industrial Court cannot act as a Court of Appeal and cannot re-appreciate the evidence on record and come to a different conclusion. He then submits that the oral and documentary evidence on record establishes the fact that the Petitioner is a workman as the work that he was performing, though designated as an Officer (Training), was that of a workman. He places relies on the

judgments of the Apex Court in the cases of *Ananda Bazar Patrika (Private) Ltd.* vs. *Its workman*, **1969 II LLJ 670**, *Prem Sagar (T.)* vs. *Standard Vacuum Oil Company, Madras and others*, **1964 I LLJ 47** and *Arkal Govind Raj Rao* vs. *Ciba Geigy of India Ltd., Bombay*, **(1985) 3 SCC 371** in support of his contention that the nature of work performed by the Petitioner fell within the definition of the term 'workman'.

5. Mr.Talsania for the Company submits that the Industrial Court has acted well within its jurisdiction while concluding that the findings recorded by the Labour Court are not based on the legal evidence on record and are therefore perverse. He submits that the Industrial Court has rightly held that the Petitioner could not have been considered to be a workman since he was a co-ordinator-cum-assessor-cum-organiser and this work could not be the work of a Clerk. Furthermore, according to the learned Advocate, there was evidence on record to indicate that the Petitioner used to draw the budget for his department and therefore by no stretch of imagination could such a person be considered to be a workman. Mr.Talsania places reliance on the judgments in *H.R.Adyanthaya* vs. *Sandoz (India) Ltd*, **AIR 1994 SC 2608** and *Sh.T.P.Srivastava* vs. *M/s.National Tobacco Co. of India Ltd.*, **AIR 1991 SC 2294** and *S.K.Maini* vs. *M/s.Carona Sahu Company Limited and others*, **AIR 1994 SC**

1824.

6. The Petitioner in his evidence has deposed to the effect that he was the ex-officio member of the Project Management Group and that he was responsible to a certain extent for the library activities. The Petitioner has also deposed to the effect that a settlement was reached between the Union, workers and the management and that the benefits under the settlement were not given to him. The Company's witness has stated that the Petitioner does not belong to the Managerial cadre but fell within the cadre of staff cum supervisors. According to the witness, the Petitioner helped in deciding the training course for the employees of the Company. The other evidence on record shows that the workman did work as a co-ordinator, assessor and organiser. However, the evidence on record shows that the Petitioner was not permitted to take any independent decisions in this regard. All decisions were to be routed through the managerial cadre. Although the Petitioner was permitted to negotiate the best rates for the training programmes, the final decision could not be taken by him.

7. On a perusal of the evidence on record and the judgments of the Labour Court and the Industrial Court, it is obvious that the Petitioner used to participate in

deciding the training course. He did negotiate the rates regarding the training programmes and represented the Company while dealing with the outside agencies. Seminars were organised by him in consultation with the Management. The final decision regarding the training course and the rates for training programmes were all taken by the managerial cadre. It is no doubt true that the work which the Petitioner performed may not *stricto sensu* fall within the term clerical work. However, there is no gainsaying that the work performed by the Petitioner was 'operational'. A person who performs operational work in any industry would be included in the definition of "workman". The term "operational" has been considered in the judgment of *Adyanthaya* (supra). The Apex Court in this decision considered its various earlier judgments in the case of *Burmah Shell Oil Storage & Distribution Co. of India* vs. *Burmah Shell Management Staff Association*, **AIR 1971 SC 922**, *May and Baker (India) Ltd.* vs. *Their Workman*, **AIR 1967 SC 678** and *Western Indian Match Co. Ltd.* vs. *Their Workmen*, **AIR 1964 SC 472**, where the Apex Court had considered that an employee who do not come within the four exceptions to the definition need not necessarily be a workman. The Apex Court has also considered the judgments in *Ved Prakash Gupta* vs. *Delton Cable India (P) Ltd.*, **AIR 1984 SC 914** and *S.K.Verma* vs. *Mahesh Chandra*, **AIR 1984 SC 1462**, where the Apex Court held

that since the employee did not fall within the four exceptions, he ought to be accepted as a workman. The Apex Court also considered the *Arkal Govind Raj Rao's* case (supra) which is cited before me by Dr.Kulkarni. Therefore, the law as it stands today is that a person must demonstrate that he does not fall within the exceptions of the definition; he must establish that he is an employee doing manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In the present case, it is obvious that the Petitioner falls within the definition of "workman" as he was doing operational work. Organising seminars, performing work of an assessor, co-ordinator may not be clerical work strictly but certainly would fall within the parameters of operational work. As per the 1996 Edition of The Chambers Dictionary, the words 'operational' and 'operation' mean as follows :

> 'Operational' means relating to operations; ready for action.
>
> 'Operation' means the act or process of operating; something which is done or carried out; agency; infuence; a method of working; an action or series of movements; a surgical procedure; esp. in military or surgical sense.

Therefore, operation is a method of working or an action or series of movements. It also means and includes something which is done or carried out. The work of acting as co-ordinator, assessor and organiser would,

therefore, mean that he was employed for carrying out the method of working and, therefore, the Petitioner falls within the definition of ‘workman’ under Section 2(s) of the ID Act.

8. The cases in *Ananda Bazar Patrika* (supra) and *Prem Sagar* (supra) were decided by the Apex Court before the definition of "workman" was amended to include "operational work". Section 2(s) of the ID Act was amended with effect from 21st August 1984. The judgment in *Ananda Bazar Patrika* (supra) considered the case of a person who was doing clerical work vis-a-vis supervisory work. In that case, the Apex Court came to the decision that the employee was doing work which was mainly clerical in nature and occasionally discharging duties which were supervisory in nature.

9. In the case of *S.K.Maini* (supra), the Apex Court considered whether a Shop Manager/Incharge of a local shop of a big company could be considered a workman. The Apex Court held that the duties which such an employee was discharging was administrative and managerial in nature and incidentally he was required to do some work of a clerical nature. Although the power to appoint or discharge employees under him was not vested with the employee, the Apex Court held that such a person could still fall within the excepted categories

of the definition.

10. In the case of *T.P.Srivastava* (supra), the employee was designated as Salesman and the duties involved were of suggesting ways and means to improve the sales of the company's product. He was also expected to make suggestions regarding publicity of the product in markets and melas. He also had a hand in advertising of the product. The Apex Court held that such an employee required an imaginative and creative mind and, therefore, could not be considered as being employed for work which was manual, skilled or unskilled or clerical in nature. In the present case, although some of the duties which the Petitioner was performing may not be clerical in nature, they certainly would constitute 'operational work'.

11. In this view of the matter, the order dated 12th July 1996 passed by the Industrial Court, Pune in Revision Application No.16 of 1996 is set aside. It is held that the Petitioner falls within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and is, therefore, an employee within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Hence, Complaint (ULP) No.240 of 1994 is maintainable and is restored to the file of the Labour Court, Pune.

12. Rule accordingly made absolute. No order as to costs.

13. Labour Court, Pune to decide Complaint (ULP) No.240 of 1994 as expeditiously as possible.

14. Writ to go down forthwith.

15. Certified copy expedited.